

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 22, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP571-CR

Cir. Ct. No. 2012CF348

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RYAN O. VILLARREAL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County:
JOHN R. RACE and DAVID M. REDDY, Judges. *Affirmed.*

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Ryan Villarreal appeals a judgment of conviction for possession of a firearm, false imprisonment, misdemeanor battery, and two counts of obstructing a police officer. Villarreal contends the circuit court erred in

denying his motion to suppress evidence obtained from the warrantless search of his vehicle. For the reasons discussed below, we affirm.

BACKGROUND

¶2 Villarreal was charged with possession of a firearm, false imprisonment, misdemeanor battery, and two counts of obstructing a police officer. Villarreal moved to suppress evidence that was obtained following a warrantless search of his vehicle on the basis that the search was unconstitutional. At the hearing on Villarreal's motion, testimony was given by Walworth County Sheriff's Department Deputies James Trussler, Gerald Post and William Mortlock, and City of Delavan Police Officer Michael Sulzer.

¶3 Deputy Trussler testified that on July 20, 2012, he spoke with a witness who reported that he had overheard yelling and screaming outside his home and "observed a female subject running away" from a man, who was either his neighbors' son or stepson. Deputy Trussler testified that the witness informed him that the "male subject ultimately caught up to the female and started striking her with a closed fist [on] the side of the head." Deputy Trussler testified that the witness informed him that the man got into a burgundy four-door Chevrolet vehicle with Wisconsin license plates and "yell[ed] for the female [] to get in" and that the female did so after some hesitation. Deputy Trussler testified that he drove around the area searching for the red vehicle and while doing so, received a call from the dispatcher that "someone had just called in stating that they saw a red four-door Chevrolet ... where a male subject was involved in a physical altercation with a female and that the male subject had picked up and thrown the female into the back of the car." Deputy Trussler testified that he began driving toward the location where the red car was reported, but did not locate the vehicle.

¶4 Deputy Post testified that on July 20, 2012, he received information about the location of a vehicle “in which a male and female had an altercation.” Deputy Post testified that as he drove toward that location, he learned that the vehicle had been observed at a gas station in the city of Delavan. Deputy Post testified that when he arrived at the gas station, he observed Villarreal in handcuffs standing behind a maroon colored vehicle and a female sitting in the vehicle’s front passenger seat. Deputy Post testified that he observed that the female had a “pretty extensive injury” to her left eye, which was “starting to swell shut” and “was turning colors like blue and purple,” an injury to her left arm, and an injury to the middle of her lower back, which Deputy Post observed when she leaned forward. Deputy Post testified that the female initially acted “apprehensive and sorrowful,” and initially did not want to discuss whether Villarreal had caused her injuries; however, she eventually informed him that Villarreal “had hit her in the head three times.” Deputy Post testified that the female received on-the-scene medical treatment and was then transported to a local hospital.

¶5 Deputy Mortlock testified that on July 20, 2012, he learned of an altercation between a male and female who were last seen driving in a maroon vehicle. Deputy Mortlock testified that as he drove by a gas station in Delavan, he observed a maroon Chevrolet vehicle in the station’s parking lot. Deputy Mortlock testified that he pulled his vehicle into the parking lot and observed a Delavan police officer “yelling commands” at Villarreal, who was in the driver’s seat of the vehicle, to exit the car. Deputy Mortlock testified that he observed that a female was sitting inside the vehicle who was “shaking [and] crying” and “had a swollen left eye.” Deputy Mortlock testified that Villarreal exited the vehicle, was placed in handcuffs, and that he advised Villarreal that Villarreal was being arrested for battery and disorderly conduct. Deputy Mortlock testified that prior to

placing Villarreal in the back of his squad car, he searched Villarreal's person and discovered in Villarreal's pocket a pipe used to smoke drugs, which "had a burnt residue in it and ... the odor of marijuana in it."

¶6 Officer Sulzer testified that on July 20, 2012, he was dispatched to a gas station where a vehicle was located that matched the description of a vehicle the County Sheriff's Department was searching for in response to a report of a possible domestic violence report. Officer Sulzer testified that he had been advised "[t]hat there was a 911 call that had stated there seemed to be a fight outside of a vehicle and that a male subject had picked up a female subject and thrown her into the vehicle." Officer Sulzer testified that when he arrived at the scene, he observed the female inside Villarreal's vehicle "had some bruises on her face and [] was crying," she "was in a frantic mood ... her left eye ... appeared to be very swollen," and she complained of pain to her back where he observed "red marks." Officer Sulzer testified that after the drug pipe was removed from Villarreal's person, he conducted a search of Villarreal's vehicle, where he found lying in the backseat of Villarreal's vehicle a photograph of Villarreal holding a handgun.

¶7 The circuit court denied Villarreal's motion to suppress following the hearing. The court determined that when the officers located Villarreal's vehicle, they had probable cause to arrest Villarreal and that the search of Villarreal's vehicle was constitutional because the vehicle "was a crime scene." Following the denial of his motion to suppress, Villarreal pled guilty to all charged offenses and a judgment of conviction was entered by the court. Villarreal appeals.

DISCUSSION

¶8 Villarreal contends the warrantless search of his motor vehicle was unconstitutional and that any evidence obtained from the search should have been suppressed.

¶9 Our review of a circuit court’s ruling on Villarreal’s motion to suppress presents a mixed question of fact and law. We will uphold the circuit court’s factual findings unless those findings are clearly erroneous. *State v. Sykes*, 2005 WI 48, ¶12, 279 Wis. 2d 742, 695 N.W.2d 277. However, we will review the application of those facts to constitutional principles de novo. *Id.*

¶10 The Fourth Amendment to the United States Constitution, and article I, section 11 of the Wisconsin Constitution, protect an individual’s right to be free from unreasonable searches. *State v. Lefler*, 2013 WI App 22, ¶7, 346 Wis. 2d 220, 827 N.W.2d 650. A warrantless search is per se unreasonable unless the search is justified by one of a “few specifically established and well-delineated exceptions” to the warrant requirement. *State v. Phillips*, 218 Wis. 2d 180, 196, 577 N.W.2d 794 (1998) (quoted source omitted). One such exception exists when a recent occupant of a vehicle is arrested and “it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’” *Arizona v. Gant*, 556 U.S. 332, 343-44 (2009) (quoting *Thornton v. U.S.*, 541 U.S. 615, 632 (2004)). The Supreme Court in *Gant* explained that “[i]n many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence.” *Id.* at 343. In other cases, however, “the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.” *Id.* at 344. *Gant’s* “reasonable to believe” standard is less than probable cause. *See State v.*

Smiter, 2011 WI App 15, ¶16 n.4, 331 Wis. 2d 431, 793 N.W.2d 920; *see also County of Jefferson v. Renz*, 231 Wis. 2d 293, 316, 603 N.W.2d 541 (1999) (“‘probable cause to believe’ refers to a quantum of proof ... greater than [] ‘reason to believe’”).

¶11 The State contends that the search of Villarreal’s vehicle was justified because the officers had reason to believe that Villarreal’s vehicle contained evidence of the crime of battery, for which Villarreal was placed under arrest prior to the search of his vehicle. Villarreal contends, in contrast, that the officers did not have a reason to believe that Villarreal’s vehicle contained evidence relevant to his arrest offenses. Villarreal argues that neither the 911 call upon which the officers relied in detaining him, nor the officers’ observations at the gas station, provided a reasonable basis upon which a police officer could reasonably believe that a weapon, or any other physical evidence, could be located in his vehicle.

¶12 We agree with the State that the officers had reason to believe that Villarreal’s vehicle contained evidence relevant to his arrest for battery and, therefore, the warrantless search of his vehicle was constitutional.¹

¶13 Prior to searching Villarreal’s vehicle, the officers had information that a witness had reported seeing a woman run away from a man and the man striking the woman on the head before ordering her to get inside a vehicle, which was the same make and color of Villarreal’s vehicle. Officers observed a woman

¹ Because our decision on this issue is dispositive, we do not reach the other arguments raised by the State on appeal in support of the circuit court’s decision. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if a decision on one point disposes of the appeal, the court will not decide other issues raised).

sitting inside Villarreal’s vehicle crying, who had an “extensive” injury to her left eye, which was bruised and “starting to swell shut,” as well as injuries to her back. The women informed officers that Villarreal had hit her on the head more than once.

¶14 We conclude that under these facts, the officers had information supplying “reason to believe” that Villarreal’s vehicle contained evidence of Villarreal’s battery of the woman, such as blood or ripped clothing, or some instrumentality that Villarreal may have used to batter the woman. *See Gant*, 556 U.S. at 355. We conclude that the warrantless search of Villarreal’s vehicle was therefore constitutional and that the circuit court properly denied Villarreal’s motion to suppress. Accordingly, we affirm the judgment of conviction.

CONCLUSION

¶15 For the reasons discussed above, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2011-12).

